

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 22, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 06MD-161

MAUI

Approval in Principle of the Issuance of a Direct Lease to Kaheawa Wind Power II, LLC for Commercial Renewable Wind Energy Generation Facility Purposes, Olowalu -Ukumehame, Lahaina, Maui, Tax Map Key: (2) 4 - 8 - 01: Portion 1

APPLICANT:

Kaheawa Wind Power II, LLC a Hawaii Limited Liability Corporation whose business and mailing address is 8 Kiopaa Street, Suite 104, Pukalani, Hawaii 96768.

LEGAL REFERENCE:

Section 171-95, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of the Government (Crown) Land of Ukumehame situated at Ukumehame, Lahaina, Wailuku, Maui, identified by Tax Map Key: (2) 4-8-01: Portion 1, as shown on the attached maps labeled Exhibit A.

AREA:

325 acres, more or less.

ZONING:

State Land Use District: Conservation  
County of Maui CZO: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Construct, operate and maintain a commercial renewable wind energy generation facility.

LEASE TERM:

Twenty (20) years with an option to extend 20 additional years, subject to mutual agreement on amending or adding provisions to the lease to keep up with current industry leasing standards for wind energy projects.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent, including percentage rent as may be applicable, to be determined by staff or independent appraiser, subject to review and approval by the Chairperson. The appraisal may include step-ups (in lieu of re-openings) as may be appropriate.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

Consistent with the existing General Lease No. S-5731, the rental reopenings shall occur on the day after the tenth (10th) year of the term and at "repowering." "Repowering" shall mean: (1) the renewal or replacement of the majority (more than 80%) of the wind turbines as evidenced by, but not limited to, contemporaneous replacement of the wind turbines with different models or (2) a significant modification to that portion of the Wind Project located on the premises such that a significant revision to the existing land use permit or a new land use permit is required for the premises. The following shall not constitute Repowering: (1) reuse of the Project Improvements, including roads, erosion control and premises access improvements, meteorological towers or transmission interconnection related to the premises, (2) replacement of the Wind Project substation for any reason, (3) replacement of wind turbines on the premises with substantially the same make and model in the same locations, or (4) replacement of any or all of the wind turbines and Project Improvements on the premises as a result of casualty or loss.

PERFORMANCE BOND:

The performance bond shall be due within 75 days of the lease commencement date. The performance bond shall be in the amount of \$1,500,000 and consistent with the terms and conditions of the performance bond requirement in the existing General Lease No. S-5731, as amended, or as may be negotiated with the department and approved by the Board.

IMPROVEMENTS:

The Applicant is proposing to construct, operate and maintain a commercial renewable wind energy generation facility comprised of up to 18 wind turbines and supporting equipment producing up to 27 megawatts of electrical power.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The subject State-owned land is located in the State Conservation District, and therefore, the Applicant's compliance with Chapter 343 requirements will be addressed through the conservation district permitting process.

DCCA VERIFICATION:

Place of business registration confirmed:	YES
Registered business name confirmed:	YES
Applicant in good standing confirmed:	YES

APPLICANT REQUIREMENTS:

1. Conduct its due diligence and obtain entitlements including, but not limited to submitting a Conservation District Use Application to, and obtaining a Conservation District Use Permit from the Office of Conservation and Coastal Lands, obtaining an Incidental Take License, EA/EIS compliance, etc...
2. Negotiate and enter into a Power Purchase Agreement with Maui Electric Company, Limited.
3. Secure project-financing commitment(s).

REMARKS:

The proposed 325-acre site is a portion of a 1,388-acre State-owned parcel at Ukumehame, Lahaina, Maui known as the Kaheawa Pastures. The site is adjacent to the 200 acres under the operation of General Lease No. S-5731 issued to the Applicant for a commercial renewable wind energy generation facility. The facility recently became operational and is currently providing Maui Electric Company, Limited, with about 9% of its total electrical load.

The adjacent proximity of the proposed site to the existing facility would allow the Applicant to utilize infrastructure it developed for the existing facility. In addition to reducing costs by sharing the existing infrastructure such sharing will reduce the proposed facility's adverse environmental impacts by minimizing the need to construct additional infrastructure.

The General Lease No. S-5731 site was originally approved by the Board in 2003 for issuance to General Electric Wind Energy/Hawi Renewable Development, Inc. (HRD). In 2004 the Applicant purchased certain assets of the wind energy project from HRD, which had spent over \$1.1 million to conduct due diligence and to satisfy the requirements in obtaining necessary permits. On December 10, 2004 the Board approved the issuance of General Lease No. S-5731 to the Applicant.

General Lease No. S-5731 was issued to the Applicant pursuant to Act 102, SLH 2002, which amended Section 171-95, Hawaii Revised Statutes, as amended, by including commercial renewable energy producers as being eligible for directly issued leases by the Board. Prior to the passage of Act 102 by the legislature the public auction process was the only means available to a renewable energy producer to obtain a lease from the State. Consequently, without reasonable assurance of being issued a lease potential renewable energy producers were reluctant to spend

the time and money to conduct due diligence and secure the required permits.

Then in 2004, to reduce the State's dependency on fossil fuel energy production, the legislature passed Act 95. Act 95 requires that 8% of the electrical output by Hawaii's electric utility companies come from renewable energy sources by the end of 2005, increasing to 10% by the end of 2010, 15% by the end of 2015 and 20% by the end of 2020. The passage of Act 95 also established a market for renewable energy producers.

Given the large initial investment in time and money to plan the proposed facility and the possibility that other renewable wind energy producers may be or may become interested in the site for the same purpose the Applicant is requesting that the Board authorize the Department to directly negotiate a lease with the Applicant covering the subject State conservation land. The direct negotiations would commence upon the Applicant completing its due diligence, being issued a Conservation District Use Permit, commencing negotiations of a Power Purchase Agreement with Maui Electric Company, Limited, securing financing commitment(s) in an amount sufficient to complete the proposed facility and obtaining any other approvals as may be required by the Federal, State and County governments.

The staff appraiser's assistance was requested to determine the consideration, if any, the State would be entitled to by entering into such an agreement with the Applicant. The staff appraiser concluded that \$12,000 annually (Exhibit B) would be appropriate consideration in validating such agreement.

Comments regarding the Applicant's request were solicited from the Department of Land and Natural Resources, Divisions of Forestry and Wildlife and Historic Preservation, the Office of Conservation and Coastal Lands, the Office of Hawaiian Affairs, the County of Maui, Planning Department and the Maui Electric Company, Limited. The comments received are attached as Exhibit C.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

RECOMMENDATION: That the Board:

- A. Subject to fulfilling the Applicant requirements listed above, approve in principle the issuance of a direct lease to Kaheawa Wind Power II, LLC covering the proposed lease area subject to the following:
  - 1. This approval in principle shall not constitute the Board's endorsement of the proposed land use in the conservation district.
  - 2. This approval in principal shall not be deemed to be an approval of a lease to Kaheawa Wind Power II, LLC as staff shall return to the Board at a later date for approval of the lease disclosing the negotiated terms and conditions, provided the Board approves the Kaheawa Wind Power, LLC Conservation District Use Application.
- B. Authorize the Department's Land Division to commence negotiations with Kaheawa Wind Power II, LLC for a direct lease covering the proposed lease area subject to the payment of

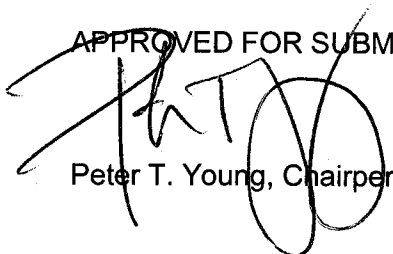
September 22, 2006

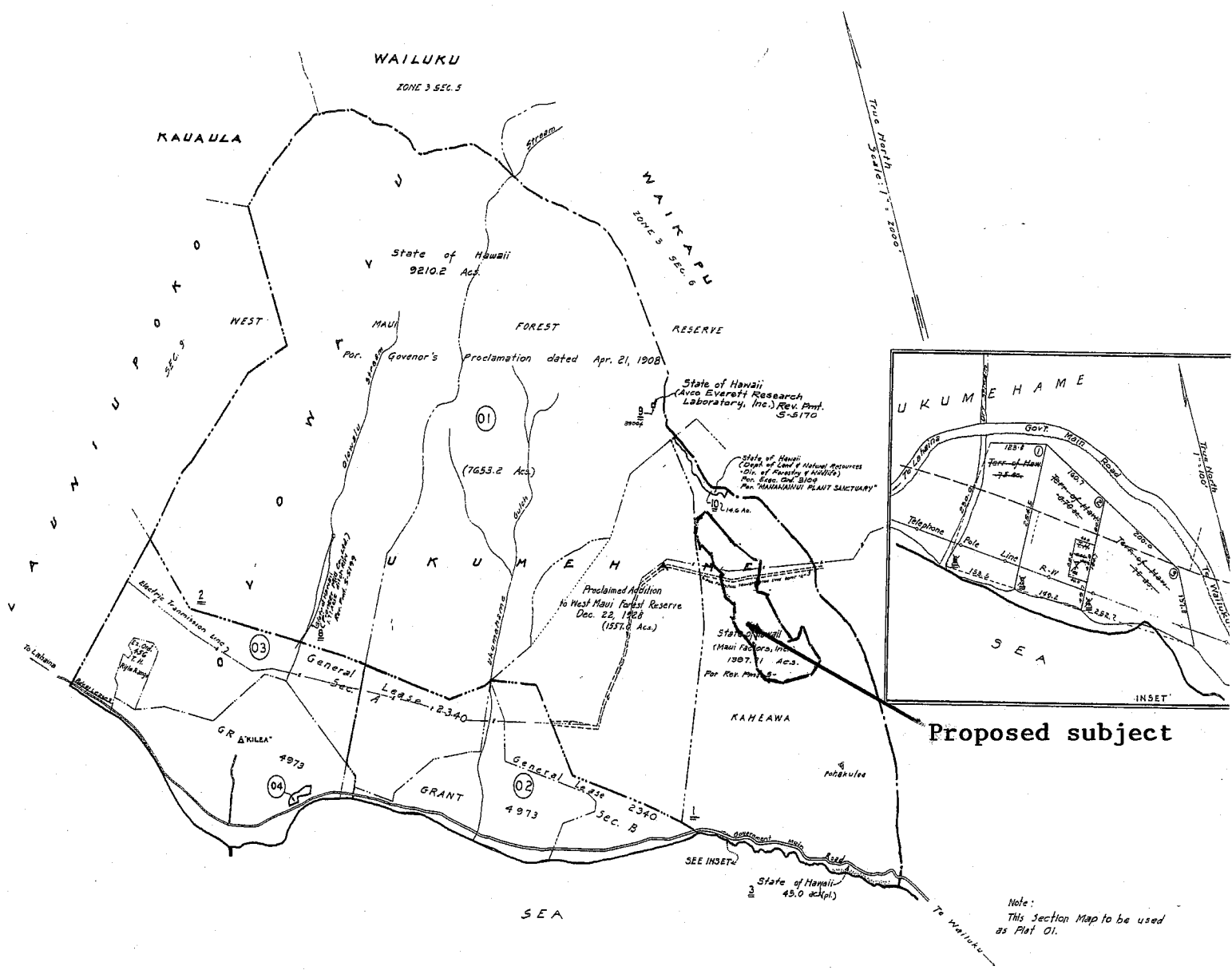
consideration in the amount of \$12,000 annually by Kaheawa Wind Power II, LLC to the Department.

Respectfully Submitted,

  
Gary Martin  
Land Agent

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



Proposed subject

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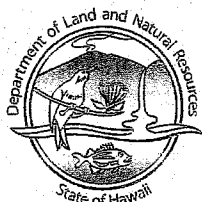
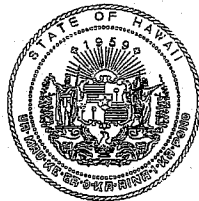
ADVANCE SHEET  
SUBJECT TO CHANGE

PRINTED

EXHIBIT "A"



LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

August 31, 2006

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR

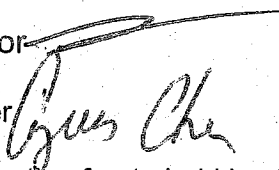
DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

MEMORANDUM

TO: Peter T. Young, Chairperson

THROUGH: Russell Y. Tsuji, Land Division Administrator

FROM: Cyrus C. Chen, Real Estate Appraisal Manager 

SUBJECT: In-House Valuation Recommendation – Reservation fee to hold land for Wind Farm facility purposes

PSF No.: 06MD-161  
Applicant: Kaheawa Wind Power II  
Location: Olowalu-Ukumehame, Lahaina, Maui  
Land Area: 325 acres approximately  
Tax Map Key: (2) 2-4-8: 1 por.  
Char. of Use: To construct, operate and maintain a wind farm facility

We have been requested to provide a fee amount to reserve land to construct, operate, and maintain a wind farm facility. This land will be held exclusively for one to two years for the Applicant while they conduct its due diligence and acquire appropriate permits. The Applicant is the same entity that leases an adjacent parcel to operate a newly constructed wind farm. This General Lease (GL S-5731) was issued July 15, 2005.

The Applicant intends to erect 18 General Electric 1.5MW wind generating turbines similar to the existing project. The final number of turbines actually built is dependent on what the utility will purchase in the purchase power agreement. Other improvements include access roads, meteorological towers, operations and maintenance building, an expansion and interconnection to the existing substation and communications network, and other infrastructure improvements.

A survey of other landowners was conducted. The majority of these landowners do not have any formal policy regarding reservation fees or option payments. Kamehameha Schools charges developers carrying costs if there is a lengthy due diligence or permitting process involved. Representatives from Campbell Estate and Bank of Hawaii Trust Department have suggested fees be based on what market opportunity is foregone in order to reserve the property. This may be based on what potential rent would be. If the land is not entitled or fully

EXHIBIT " B "



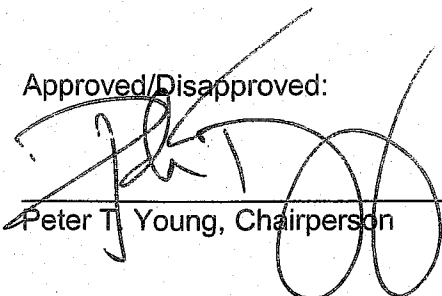
permitted for development, then the fee could be based on unentitled land value or on a discounted market rent. A 50% discount was suggested for land not readily usable.

Other research was conducted into what other wind farm operations are paying for options. Discussions with a representative of the Applicant indicates option fees vary widely in the market. There is no real formula for deriving an option fee and is largely dependent on what the landowner feels it is worth and what they can get. The Applicant indicates that as a rule of thumb, option fees dependent on megawatt (MW) range from a low of \$50 per MW per year to a high of \$450 per MW per year. The subject option payment would be \$12,150 per annum if the charge were based on \$450 per MW per year. The Applicant just signed an option agreement in February on the North Shore which requires a \$10,000 per annum option fee for roughly 140 acres. This fee was not based on megawatt output but more of a negotiated figure.

Staff is hesitant to base the option fee strictly on power output. If the utility does not agree to purchase the maximum power output planned by the Applicant, the amount the State would receive via option payments would decrease. Therefore, taking into account the land area involved and its prime location for wind energy, the North Shore comp and the range of fees based on power output, Staff recommends an option fee of \$12,000 per annum.

Therefore, as of August 31, 2006, the fee to reserve the subject land for the Applicant is recommended to be \$12,000 per year. It is recommended this fee can be paid quarterly.

Approved/Disapproved:

  
Peter T. Young, Chairperson

SEP 07 2006

Date

cc: District Branch Files  
Central Files

9/7/06

## DIVISION OF FORESTRY & WILDLIFE - MAUI

### MEMORANDUM

DATE: 29 August 2006

TO: Nelson Ayers,  
Forester

Ph: 808-587-4175

FROM: Dr. Fern P. Duvall II, Wildlife Biologist  
808-873-3502 Phone  
808-873-3505 Fax

SUBJECT: Comments for Russell Y. Tsuji, for Kaheawa Wind Power II, LLC  
referenced to application for Direct Lease on a portion of TMK 2-4-8-001 for  
Commercial Wind Farm Expansion

Your suspense date: 31 August 2006

My comments about the application that need discussion are bulleted in the  
following:

1. Kaheawa Wind Power (KWP) currently operates 20 wind power towers at Kaheawa; is Kaheawa Wind Power II, LLC really the same applicant as KWP? If so it seems clear that this application should require that all the issues, items, and stipulations of the original Kaheawa energy development's EIS, EA, HCP, and HCP Incidental Take Permits be addressed anew, or as a distinct section of the proposed new EIS. It seems that this is now equivalent to significant parceling out, and portioning of what is a very large scale project, the scope and imprint of which should have been all addressed together in the project's original EIS, EA and HCP processes.
2. To date KWP has not completed even the development and work associated with the first 20 towers, and associated Meteorological towers in operation on the adjacent lease site. It is not possible to assess the environmental impact of them "as built" until all the work is finished. Much of the current leased site and tower pads, working area, etc., remains (as of August 3, 2006) wholly unvegetated with winds scouring-off soils and keeping it susceptible catastrophic erosion should big rains develop. The built out effect of project-introduced invasive species, and impacts on birds, flora of the current site is pending.
3. Are the 18 towers mentioned in this application request the last towers to be developed? Or are they simply the next increment of more towers planned in the future on the same or some additional lands at Kaheawa?

4. Meteorological Towers are mentioned. How many are planned? Will any be permanently left in place? How will possible take of birds by met towers – temporary assessment type, or permanent - be integrated into this application approval process?
5. No map shows any wind tower/met tower placement plans for this next developmental phase – again making real valid assessments infeasible.
6. Invasive species unknown before the KWP development [such as *Antirrhinum*] have been brought to the KWP site during its development, and could be spread into the adjacent Forest Reserves and conservation valuable lands; the means for having KWP, and the new KWPII be responsible for future prevention, removal and remediation of the new site (and old) must be considered - even at this initial stage of application.
7. No adequate archeological flora and fauna surveys have been done for the new application site; as such, assessing ramifications for that land's use, as it pertains to the resource values it may contain, is infeasible.
8. The new application properties will almost directly abut the course of the Lahaina Pali Trail at its makai end. How will the view pollution be addressed? How will certain ingress to the future towers area be handled?

# Division of Forestry & Wildlife

1151 Punchbowl Street, Rm. 325 • Honolulu, HI 96813 • (808) 587-0166 • Fax: (808) 587-0160

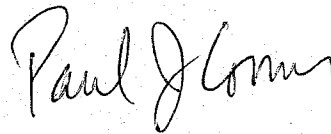
August 23, 2006

## MEMORANDUM

TO: Gary Martin, Land Agent  
Land Division

THRU: Russell Y. Tsuji, Administrator  
Land Division

FROM: Paul J. Conry, Administrator  
Division of Forestry and Wildlife



SUBJECT: Request for Comments: Kaheawa Wind Power II, LLC, Ukumehame,  
Lahaina, Wailuku, Maui, TMK: (2) 4-8-001: por. 001.

DOFAW understands that the applicant is requesting authorization through the Board of Land and Natural Resources and Land Division to negotiate a lease of additional state land for the expansion of their wind farm at Ukumehame, Maui, Hawaii. We provide the following comments to your subject request.

- The applicant must comply with all state and federal environmental protection laws appropriate to this project.
- The applicant must continue their compliance of the terms they agreed to regarding their existing Habitat Conservation Plan.
- The applicant must obtain another Habitat Conservation Plan and Incidental Take approval or an approved amendment to their existing Habitat Conservation Plan and Incidental Take License prior to any new construction activities.
- The applicant must implement an active monitoring and response protocol to prevent further invasive plant introductions to the area and most importantly, keep them from spreading into nearby forest reserve.
- There is an apparent confusion to the number of additional towers being requested (14 or 18). Please confirm the correct number of towers that is being requested.
- DOFAW is concerned on the location of these towers once the numbers are confirmed because they may be located on possible nene nesting sites. Please work with the Maui DOFAW Wildlife staff regarding this issue.
- The applicant will need to take seriously the removal of construction debris and materials during construction. Stricter regulations of the applicant's lease by DLNR (landowner) or Department of Health (environment laws) are needed to

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

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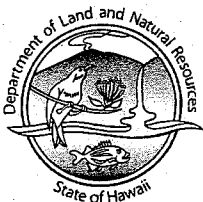
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LAND DIVISION

Gary Martin  
Page 2

prevent debris from settling into the gulch areas with the current lease or should be added to the amended lease. Thank you for the opportunity to comment on this project.

C: DOFAW Maui Branch  
John Medeiros, DOFAW Maui Wildlife  
Bill Standley, DOFAW Administration

LINDA LINGLE  
GOVERNOR OF HAWAII



RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS

PETER T. YOUNG  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
DEPUTY DIRECTOR

DEAN NAKANO  
ACTING DEPUTY DIRECTOR - WATER

2006 AUG -9 A 10: 17  
STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

August 3, 2006

PSF: 06MD-161  
LD-GM

MEMORANDUM

TO:

**State Agencies:**

- \_\_\_ DOA
- \_\_\_ DHHL
- \_\_\_ DLNR-Aquatic Resources
- ☒ DLNR-Forestry & Wildlife
- ☒ DLNR-Historic Preservation
- \_\_\_ DLNR-Water Resource Management
- ☒ OCCL

**Federal Agencies:**

- \_\_\_ Corps of Engineers
- \_\_\_ NRCS

**County Agencies:**

- ☒ Planning
- \_\_\_ Parks & Recreation
- \_\_\_ Public Works
- \_\_\_ Water Department

**Other Agencies:**

- ☒ Office of Hawaiian Affairs
- ☒ Maui Electric Company Ltd

FROM: **Russell Y. Tsuji, Administrator**  
SUBJECT: **Request for Comments**  
LOCATION: **Ukumehame, Lahaina, Wailuku, Maui, TMK: (2) 4-8-001: Portion 001**  
APPLICANT: **Kaheawa Wind Power II, LLC**

Transmitted for your review and comment is a copy of the Applicant's application requesting a direct lease covering the above referenced State-owned land, together with cover letter and site map. We would appreciate your comments on this application. Please submit to our office or fax to 587-0455 any comments by **September 5, 2006**. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact **Gary Martin at 587-0421**. Thank you.

Attachments

*\*New CDUA/EIS*

- ( ) We have no objections
- ( ) We have no comments
- (☒) Comments are attached

Signed: *[Signature]*

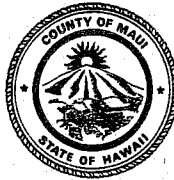
Date: \_\_\_\_\_

cc: Central Files  
District Files

ALAN M. ARAKAWA  
Mayor

MICHAEL W. FOLEY  
Director

Don Couch  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING** 2006 AUG 29 A 10: 15

August 23, 2006

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Mr. Russell T. Tsuji  
Department of Land and Natural  
Resources, Land Division  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Tsuji:

Re: Kaheawa Wind Power II, LLC at TMK (2) 4-8-001:portion of 001,  
Ukumehame, Lahaina, Maui

The proposed application should address visual impacts the towers will have. A comprehensive view analysis should be included in the application. After Phase 1 of the Kaheawa Wind Power Facility was constructed there were numerous letters to the editor written in the local newspaper voicing concerns over the visual impact the towers were having as they went up the ridge line. The impacts are greatest from a distance, primarily from the Kihei-Wailea area. The new site appears closer to the pali and may also impact that area of the island. The view analysis should also consider impacts from this area of the island.

There were also previous concerns raised regarding impacts on endangered species, primarily the nene goose that inhabit the West Maui Mountains.

Thank you for the opportunity to comment. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office by email at [colleen.suyama@co.maui.hi.us](mailto:colleen.suyama@co.maui.hi.us) or at 270-7512.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Foley", is written over the typed name.

MICHAEL W. FOLEY  
Planning Director

MWF:CMS:bg

c: Clayton Yoshida, AICP, Planning Program Administrator  
Colleen Suyama, Staff Planner  
Project File  
General File  
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DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

September 6, 2006

Mr. Russell Y. Tsuji  
Administrator  
Department of Land and Natural Resources  
Land Division  
State of Hawaii  
Post Office Box 621  
Honolulu, Hawaii 96809

Subject: Kaheawa Wind Power II, LLC  
Request for State Lands Application

Dear Mr. Tsuji:

Thank you for the opportunity to comment on the subject application and your transmittal of August 3, 2006. We have indicated on the transmittal as "Comments are attached". The following are our comments:

- The subject parcel is identified as TMK 2-4-8-001 in the subject application. Maui Electric Company, Limited (MECO) recommends that it should be identified as (2) 4-8-001: Portion 001 on all future correspondence and as indicated on your transmittal.
- MECO does not anticipate any power requirement being requested by Kaheawa II LLC for the temporary meteorological towers. However, should there be a need for power and therefore a need for MECO to gain access to these sites, MECO request that it be included in the Right-of-Entry requested by Kaheawa II, LLC.
- The application state that this project will include "...an expansion and interconnection to the existing substation and communications network, and other infrastructure improvements necessary to operate the project." This item has been discussed in recent meetings with representatives of this Kaheawa II project. Further review is required before the expansion of the existing Kaheawa Substation or a need for a separate substation is confirmed.
- As alluded to in the previous bullet, MECO and Kaheawa Wind Power II, LLC have initiated discussion on integrating the additional 27 MW of power being proposed with this project.

Should you have any questions, please feel free to contact me at (808) 871-2364.

Sincerely,

Neal Shinyama  
Manager, Engineering Department

CC: Ed Reinhardt (MECO)